CARRIERS—DAMAGES FOR LOSS OF MARKET—CARRIAGE OF GOODS DESTINED FOR ENEMIES—SEIZURE OF SHIPS.—The plaintiff shipped goods to South Africa upon the defendant's vessel, which unknown to the plaintiff carried supplies for the Boers. The goods of the plaintiff were intended for sale to the English troops before like goods should arrive from other places. The vessel was captured and detained by the English for three months. In an action for damages, *Held*, that the shipper may recover the difference between the market price of the goods at the time at which they should have been delivered and at the time when they were delivered. *Dunn* v. *Donald Currie & Co.* [1902],2 K. B. 614.

This decision seems to hinge upon the fact that the defendants knew of the market that the plaintiff expected for his goods. The court discussed the case of *The Parana*, 2 Prob. Div. (1877) 121, and at first blush they seem in conflict, but Mellish J., in that case says, "If it is known to both parties that the goods will sell at a better price if they arrive at one time than if they arrive at a later time, that may be a ground for giving damages for their arriving too late and selling for a lower price." In *The Parana* the defendant knew of the intended disposition of the goods. The former rule in both United States and England was that the loss of market as the measure of damages was too speculative to be applied to ships or carriers on waters. *The Nottinghill* (1884),9 P. D. 105; *The Parana*, ante; SEDGWICK ON DAMAGES, vol. 2 p. 110. In the bill of lading given by the defendant to the plaintiff there was an exception of liability for *restraint of princes*. The general rule seems to be that such an exception relieves the ship owner from liability in the absence of extenuating circumstances. AMERICAN & ENG. ENCY. LAW, vol. 7, p. 226; ANGELL ON CARRIERS, 7 ed. sec. 148, 200, 282; *Geipel* v. *Smith*, L. R. 7 Q. B. 404. The ship owner is not liable if the injury is caused alone by the act of the public enemy. HUTCHINSON ON CARRIERS, sec. 203; *Lewis* v. *Ludwick*, 46 Tenn. 368, s. c. 98 Am. Dec. 454; *Mrs. Alexander's Cotton*, 2 Wall. 404; *Bland* v. *Adams Exp. Co.*, 62 Ky. (1 Duvall) 232, 85 Am. Dec. 623. But the principle is well established that if the carrier's negligence exposes the goods to capture, or if he fails to use due diligence to prevent loss from the public enemy then he is liable for such loss. *Holladay* v. *Kennard*, 12 Wall. 254; *Caldwell* v. *S. Express Co.*, Fed. Cases 2303; *Tan Bark Case*. 1 Brown Admr. 151; HUTCHINSON ON CARRIERS, sec. 208-210. This principle seems to have had weight in the decision of this case as the court says, "The course which the defendant took in carrying the enemy's goods without the knowledge and consent of the other shippers was a breach of duty towards them." It was the act of war, but it was caused by the defendant's negligence. It was a wrong, and the damages resulting, conjoined to form a tort. Since the defendant knew of the market that the plaintiff expected for the goods shipped, he should be charged with the loss of it should it occur from his failure to use due care. *The Gold Hunter*, 1 Blatchford & How. Admiralty 300; *The Julia Smith*, 1 Newberry's Admiralty 166; *The Success*, Fed. Cases 13586, 7 Blatchford 551; *Page* v. *Monroe*, Holmes 232, Fed. Cases 10665; *Rowe* v. *City of Dublin*, Fed. Cases 12094, 1 Benedict 46; *The Golden Rule*, 9 Fed. Rep. 334; SEDGWICK ON DAMAGES (7 ed.) vol. 2, 107; ANGELL ON CARRIERS, (5th ed.) sec. 482 and notes. Based upon the peculiar facts of this case the decision appears sound both in principle and law.

CONSTITUTIONAL LAW—CIGARETTES—ORIGINAL PACKAGE.—Cigarettes purchased by appellant from a foreign manufacturer were packed in pasteboard boxes, containing ten cigarettes each, the packages being separately sealed and stamped. The packages were consigned to appellant, unenclosed

by any box, wrapper or receptacle, and there was no showing that they were so enclosed by the carrier. On appeal from a mulct tax assessed under a statute imposing such a tax on persons selling cigarettes within the state, *Held*, that the statute was constitutional. *Cook* v. *Marshall County* (1903), — Ia. —, 93 N. W. Rep. 372.

The court held that the boxes were not original packages under the rule of federal decisions, *Leisy* v. *Hardin* (1890), 135 U. S. 100, 10 Sup. Ct. Rep. 681, 34 L. ed. 128, and that the sale of the cigarettes was therefore subject to state regulation. The court follows the rule of *Austin* v. *Tennessee* (1900), 179 U. S. 343, 21 Sup. Ct. Rep. 132, 45 L. ed. 224, upholding a similar statute, that "the size of the package in which bona fide transactions are carried on between the manufacturer and the wholesale dealer residing in different states" is to govern, and not the "size of the package in which the importation is actually made." The transaction in this case, far from being bona fide, the court termed a "discreditable subterfuge to which the court ought not to lend its countenance." The court criticises the extension of the doctrine originally laid down by Chief Justice Marshall in *Brown* v. *Maryland* (1827), 12 Wheat. 419, 6 L. ed. 678, enunciated as it was at a time when for safety and convenience in transportation, articles of commerce were packed in boxes or bales, as unwarrantable, and the principle there announced as "so distorted and wrested from its original simple meaning, that if the great jurist were permitted to return to the scene of his historic labors, he would doubtless hesitate long before acknowledging the legitimacy of the descent of the modern doctrine." The appellant attempted to distinguish the principal case from that of *Austin* v. *Tennessee*, *supra*, in that in the latter it appeared affirmatively that the boxes were transported in a basket furnished by the carrier, while in the former no receptacle was used by the consignor, nor did it appear that the express company employed any in the transit. The court, however, assumed that in removing the boxes, the carrier acted in an ordinary and rational manner, and gathered the same in some receptacle, which would then constitute the original package. *McGregor* v. *Cone* (1898), 104 Ia. 465, 73 N. W. 1041, 39 L. R. A. 484, 65 Am. St. Rep. 522; *State* v. *Chapman* (1890), 1 S. D. 114, 47 N. W. 411, 10 L. R. A. 432; *Guckenheimer* v. *Sellars* (1897), 81 Fed. 997; *Keith* v. *State* (1890), 91 Ala. 2, 8 So. 353, 10 L. R. A. 430. Prior to the case of *Austin* v. *Tennessee*, which concluded the question, similar boxes had been held original packages, and statutes similar to the above held unconstitutional. *State* v. *Goetze* (1897), 43 W. Va. 495, 64 Am. St. Rep. 871, 27 S. E. 225; *Iowa* v. *McGregor* (1896), 76 Fed. 956; *In re Harman* (1890), 43 Fed. Rep. 372; *In re Minor* (1895), 69 Fed. 233.

CONSTITUTIONAL LAW—MUNICIPAL CORPORATIONS—VALIDITY OF ORDINANCE REQUIRING UNION LABEL.—An ordinance required the Typographical Union label on all city printing. A non-union firm, in response to an advertisement, submitted a bid and was awarded a contract. The city refused to accept the work on its completion, upon the ground that it did not bear the union label. Action was thereupon brought to recover the amount of the bill, and to have the ordinance declared void. *Held*, that the latter was unconstitutional. *Marshall & Bruce Co.* v. *City of Nashville* (1903), — Tenn. —, 71 S. W. Rep. 815.

The ordinance was held to violate a provision of the city charter providing that city contracts should be awarded to the lowest bidder; to contravene the Fourteenth Amendment, in that it deprived non-union men of their rights and liberties in pursuing their avocation so far as public printing is concerned; and void as a discrimination between classes, as encouraging monopoly, and as